

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
PLAINTIFF,)	CASE NO. 2:17-CR-00140
)	
vs.)	
)	
KEITH DRUMMOND,)	
)	
DEFENDANT.)	
_____)	

TRANSCRIPT OF GUILTY PLEA PROCEEDINGS
BEFORE THE HONORABLE EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE
JULY 23, 2018; 8:45 A.M.
COLUMBUS, OHIO

APPEARANCES:

FOR THE PLAINTIFF:

UNITED STATES ATTORNEY'S OFFICE
By: KEVIN W. KELLEY
NOAH R. LITTON
Assistant United States Attorneys
303 Marconi Boulevard
Columbus, Ohio 43215

FOR THE DEFENDANT:

By: LARRY W. THOMAS, ESQ.
98 Hamilton Park
Columbus, Ohio 43203

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Proceedings recorded by mechanical stenography,
transcript produced by computer.

DARLA J. COULTER, RMR, CRR
FEDERAL OFFICIAL COURT REPORTER
85 MARCONI BLVD., COLUMBUS, OHIO 43215
(614) 719-3245

Monday Morning Session

July 23, 2018

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(The following proceeding was held in chambers.)

THE COURT: I just wanted to touch base. I don't think I need anything from any of you.

Did I get the government's voir dire questions?

MR. KELLEY: Your Honor, I filed those, I think, a while back.

THE COURT: Okay. That's it. That's why. They're in here somewhere then.

You don't have any issues with each other's questions, do you?

MR. THOMAS: No, Your Honor.

MR. KELLEY: No, Your Honor.

THE COURT: Everybody's looked pretty standard so that's good.

Anything on your mind we need to take up before we start?

MR. KELLEY: Your Honor, just so it ends up on the record, I did provide Mr. Thomas a notebook of Jencks material yesterday. I broke down and felt bad for him and decided to give it to him early. It looks more onerous than it is, and so I wanted to -- I gave him an index to it, I gave him the order of our anticipated witnesses and identified the actual

1 witnesses for him. I actually think there's less than 40 pages
2 of witness summaries in total, but there's over 200 pages of
3 stuff because we also gave him criminal history for every
4 witness, as well as a number of witness statements of witnesses
5 we don't intend to call. So just for if there's any need going
6 forward, I wanted the record to kind of cover that.

7 THE COURT: And you have the witness list the
8 government has provided then, right?

9 MR. THOMAS: Yes, Your Honor.

10 MR. KELLEY: He does not have the witness list I gave
11 the Court for voir dire, Your Honor.

12 THE COURT: Well, the reason I ask about that is a
13 simple one. I just want to make sure when we finish voir dire,
14 I've asked about all the names of people who might testify.
15 I'm not going to identify them as defense or prosecution, just
16 these are people who may be testifying.

17 I think I told you before, we don't want somebody's
18 uncle sitting on the panel here.

19 MR. THOMAS: Yes, sir.

20 THE COURT: So you're planning on giving that list --

21 MR. KELLEY: I can.

22 THE COURT: Well, the reason I'm asking, I want to
23 make sure that if you have anybody to add to that, Mr. Thomas,
24 I need to know as we start the trial.

25 MR. KELLEY: I think I named almost everyone that

1 Mr. Thomas knows, Your Honor. It was a pretty thorough list.

2 I've got a copy, Larry. I will give it to you.

3 THE COURT: I'm not trying to press you about whether
4 you're going to call witnesses or not but, if you are, I just
5 want to make sure we've covered them. And I'm going to tell
6 them at the same time that don't assume every one of these
7 witnesses is going to testify and if they don't, they don't.

8 MR. THOMAS: Judge, if I could, I want to put some
9 things on the record, also.

10 THE COURT: Sure.

11 MR. THOMAS: Yes, sir, Mr. Kelley was kind enough to
12 give me a notebook yesterday, and I think he correctly
13 indicated it's probably between 150 and 200 pages, and there
14 are a lot of witness statements in here. And then he also gave
15 me some CDs with some statements of some witnesses.

16 And, Judge, the only problem I have is this:

17 When it comes to investigating and being prepared, I
18 haven't been able to share any of this information with my
19 client. And, of course, where I wasn't present, and I think
20 that he would have a right that would probably exceed the
21 Jencks to know what witnesses are being called, who is -- who
22 the witnesses are that he must confront, and what they have to
23 say and, with this, I haven't been able to do any investigation
24 on any of this.

25 On the eve of trial, I get these and I get these names

1 and I get these statements, and I haven't been able to share
2 them with my client because I'm under a court order. And I
3 need to go over this stuff with my client. I need to know what
4 his position is on these witnesses and what other things need
5 to be done. So I think it kind of -- it's hard for me to
6 prepare.

7 In other words, Judge, even in a practical sense, if I
8 was to go in, I'm thinking last night, in terms of my opening
9 statement, you know, and being able to say what is what, but I
10 haven't even discussed it with my client so I can't even do an
11 effective opening statement because I don't know what he has to
12 say about these people. So I would like the Court to allow me
13 an opportunity to go over this stuff with my client --

14 THE COURT: I assume at this point there's no
15 objection to that, is there?

16 MR. KELLEY: I'm confident Mr. Thomas will provide
17 effective representation no matter what, Your Honor.

18 THE COURT: But, I mean, as far as Mr. Drummond seeing
19 these materials. He has a right to see it now.

20 MR. KELLEY: He does.

21 THE COURT: All right. So that's not -- in other
22 words, now the question is timing.

23 Just to be clear, I think we all understand Federal
24 Criminal Rule 16 doesn't require the government to give names
25 in advance; the state rule in Ohio does.

1 But that's just a parenthetical statement on my part.

2 MR. THOMAS: Yes, sir.

3 THE COURT: So there's been no violation of any rule
4 here. And the government knows its obligation under Brady, I'm
5 sure, and Giglio.

6 Your view is that's all been complied with, but at the
7 same time, you're absolutely right. You've gotten this, your
8 client hasn't seen it. But this is contemplated by the rules.
9 What's also contemplated is an opportunity for you to use this.
10 I'm open for suggestion if you have any to make.

11 MR. THOMAS: Judge, I haven't really thought about it
12 in terms of being effective as counsel. How can I be effective
13 if I don't have an opportunity to go over this and discuss this
14 with him prior to me going in. I can do the voir dire, but I
15 don't think I can do an opening statement.

16 THE COURT: Well, I would suggest you share as much of
17 this with him, see how much he can digest. I mean, I'm hearing
18 you say that you don't have a problem going forward with voir
19 dire. It's the next step.

20 MR. THOMAS: It's the next step, being prepared for
21 that and then doing the effective cross-examination of
22 witnesses without talking to him.

23 THE COURT: Well, why don't we take this one step at a
24 time. So we'll do the voir dire, you can share this with him.
25 I don't know how much of this he can absorb between now and

1 when we would normally have opening, but if you think there's
2 still an issue we'll address it at that point.

3 MR. THOMAS: Yes, Your Honor.

4 THE COURT: I think that's the best we can do at this
5 stage because we do have the jurors here. Not that that means
6 we're going to go forward if it's going to be unfair, but
7 hopefully some of this can be digested by him.

8 How many witnesses does the government expect?

9 MR. KELLEY: Your Honor, I think 17 or 18 is all we're
10 going to call, and I identified them on the Jencks cover
11 letter.

12 THE COURT: That was a bad question on my part.

13 Some of these folks are -- I mean, there are probably
14 some cooperators in here.

15 MR. KELLEY: Yes.

16 THE COURT: How many of them?

17 MR. KELLEY: Five or six cooperators, I would say.

18 THE COURT: And the rest would be law enforcement
19 and --

20 MR. KELLEY: Lab people and others.

21 THE COURT: And you can figure out by now who the five
22 or six are. That would seem to me to be the focus of
23 Mr. Drummond's issues.

24 MR. KELLEY: There's less than 40 pages among those
25 five or six.

1 MR. THOMAS: The only thing is, Judge, I mean, when
2 they say it's less than 40 and you have CDs, yeah, if you read
3 them one time. But if you're trying to dissect these
4 statements and then trying to find information to defend my
5 client, it takes more than one reading, it takes more than one
6 listening. It takes some time to prepare for the
7 cross-examining. I can read them, yes, but to actually go over
8 them and look for inconsistencies and things like that, it
9 takes a little bit more time.

10 THE COURT: I'm somewhat sympathetic. I think the
11 rules contemplate this scenario. It's been debated. There
12 have been lots of attempts to modify Rule 16 and make it more
13 like Ohio, but I think the best I can do is give you an
14 opportunity to convince me that something in between has to be
15 done. But there are reasons the government doesn't typically
16 do this, of course. I think this may be the first trial I've
17 had where the government has felt there's some sort of danger
18 to the witnesses where the Jencks material was on the eve of
19 trial.

20 But, again, I think the rule contemplates that. But I
21 will listen to you if you have some other suggestion to make
22 after we get through the voir dire.

23 MR. KELLEY: And, Your Honor, Mr. Thomas did
24 address -- and the protective order that we sought and the
25 Court granted has probably made it more difficult, but I also

1 would ask the Court at some point, when we have an opportunity,
2 to remind Mr. Drummond of that just on the record.

3 I have no doubt that Larry has shared it with him, but
4 for purposes of our record, if the Court could just find a
5 moment to remind Mr. Drummond that these materials are subject
6 to a protective order consistent with what the Court had
7 previously ordered, I would appreciate it.

8 THE COURT: For his eyes, your eyes, and, I don't know
9 if you have anybody else working with you on this, but anybody
10 in Mr. Thomas' employ, of course.

11 MR. KELLEY: Right. We're just very concerned,
12 Your Honor, about third parties. And, again, no concern over
13 Mr. Thomas, but I've assured witnesses I would take every step
14 I could to protect their identities.

15 THE COURT: All right. Anything else before we get
16 started?

17 MR. THOMAS: Just, Judge, I would also like to
18 probably bring to the Court's attention I'm going to be filing
19 some motions in limine because some of this stuff in here
20 pertains to acts -- other acts that Mr. Drummond hasn't been
21 charged with. More specifically, felonious assaults, assaults.

22 THE COURT: By the way, we do have a formal
23 stipulation on, I think it's Count 3, the 922(g).

24 MR. LITTON: We have offered four standalone
25 stipulations. One of them is his prior conviction. We have

1 not heard back on whether the defense is accepting those.

2 THE COURT: This would be on the felon in possession
3 of a firearm count.

4 MR. THOMAS: Judge, I think I was going to sign that
5 one stipulation. I have four of them in my briefcase out here
6 that Noah was kind enough to send to me, and I have brought
7 those with me because I wanted to discuss, again, with my
8 client.

9 THE COURT: Well, let me know on that because what I'm
10 going to do after voir dire before you start your opening is
11 give a preliminary jury instruction going through the elements
12 of each of the three counts. And, normally, I would say on
13 Count 3 that the issue of the prior conviction has been
14 stipulated so it won't be a triable issue, but that's only if
15 it's stipulated.

16 All right. Anything else you want to put on the record?

17 MR. THOMAS: No, Your Honor.

18 THE COURT: All right. And you've given me the name
19 of the officer, the police officer?

20 MR. KELLEY: Sam Chapel, Your Honor. He's an A.T.F.
21 task force officer.

22 THE COURT: Right. So I've got him in here from our
23 last meeting. And is there anybody else that's going to be at
24 your counsel table?

25 MR. KELLEY: No, Your Honor.

1 THE COURT: You're going to trust each other to do the
2 audiovisual, in other words?

3 MR. KELLEY: Not comfortably, but we will, Your Honor.

4 THE COURT: And, Mr. Thomas, anybody with you besides
5 Mr. Drummond?

6 MR. THOMAS: No, Your Honor.

7 THE COURT: All right. And then, of course, we'll do
8 all the questions together. And, just as a practical matter,
9 you know, the first question I'm going to ask is a simple one,
10 how many people have scheduling conflicts. What I typically do
11 is that will be -- we'll get the most hands to that question.
12 And my first question to you once the jury is out is do you
13 care if we let all of them go because, typically, I do. If
14 they really don't want to be on the jury, I don't think all of
15 you are too interested in keeping them on the jury so we can
16 make things go faster.

17 And I would tell you, if they do put their hand up to
18 that question, I would suggest not asking them a lot more
19 questions because it's probably not going to matter; they're
20 going to be gone.

21 Okay. I don't have any time limits. Just as long as
22 you're exercising a good use of time and effective, I'm happy
23 to take as long as we need to in voir dire because that's an
24 important part of the trial.

25 All right. Very good. We'll bring the jurors up and

1 get ready to start.

2 (Recess taken at 9:21 a.m. to 9:30 a.m.)

3 (The following proceeding was held in chambers.)

4 THE COURT: So the scuttlebutt from Ms. Green is that
5 you've been talking.

6 MR. THOMAS: Yes, Your Honor.

7 THE COURT: Okay. I mean, is he definite about
8 wanting to change his plea?

9 MR. THOMAS: Yes, sir.

10 THE COURT: All right. So what we need, of course, is
11 a written plea agreement. I assume that wouldn't take too long
12 to put together.

13 MR. KELLEY: Your Honor, what I suggested is that he
14 plead to the indictment as is. I will put on the record that
15 we're going to give him the benefit of three levels for
16 acceptance which, as the Court knows, we would not normally do
17 the morning of trial. But nothing else changes. And I think
18 that's the cleanest all the way around and actually would let
19 us go forward if you're okay with that, Larry.

20 MR. THOMAS: You're not going to limit the relevant
21 conduct?

22 MR. KELLEY: Yeah, we will.

23 THE COURT: Let's do this to make it clean and neat.
24 You know, that would give me the certainty to discharge the
25 jury. But the marshals can keep him here all day. That's not

1 a problem.

2 Can we have this done by the end of the day?

3 MR. KELLEY: I'd just assumed we do it this morning,
4 Your Honor.

5 THE COURT: In other words, I mean, a written plea
6 agreement. And I know it's simple, but that should make it
7 even easier, shouldn't it?

8 MR. KELLEY: Okay. We can do a plea --

9 THE COURT: But I'll take his plea of guilty now.

10 In other words, we'll send the jurors back downstairs
11 because I do want to thank them before they leave, and we'll do
12 a quick you'll plead guilty. You understand there's going to
13 be a plea agreement; we're going to do this again. But you're
14 not leaving here until we either have a trial or you plead
15 guilty to a plea agreement.

16 MR. THOMAS: Good for me.

17 MR. KELLEY: All right. Then I'll limit his relevant
18 conduct to what we had before, but we'll have it in writing
19 that way.

20 MR. THOMAS: We'll do that.

21 MR. KELLEY: We can do that plea very quickly,
22 Your Honor.

23 THE COURT: I'm here all day, obviously.

24 MR. THOMAS: I've still got the old plea if you want
25 to use it.

1 MR. KELLEY: We've got to change it.

2 THE COURT: Before I let you go, Judge Holschuh used
3 to tell a story there used to be a judge that would sit by
4 assignment from here in Steubenville and they didn't do many
5 trials there, and it was a big deal to have jurors pulled in.
6 And the night before he had dinner with opposing counsel and
7 they settled the case, but Judge Weinstein told them that
8 morning this courtroom is packed full of jurors. You may have
9 settled, but you're going to give them a show. He made them
10 put on a whole day of trial and then told the jurors the case
11 had settled. So I should probably do that to all of you. It
12 would be the easiest trial you ever did.

13 MR. KELLEY: I'm starting to think about it, Judge.

14 THE COURT: So we'll send the jurors downstairs right
15 now, and then I'll see you in court and we'll do what I call
16 sort of a quick you're going to plead guilty, we're going to do
17 a plea agreement, and you're going to come back here as soon as
18 the plea agreement is done and do the whole thing in full.

19 MR. KELLEY: And if the Court could indulge us, we'll
20 get it done quick so we can do that yet this morning,
21 Your Honor.

22 MR. THOMAS: I'm here.

23 THE COURT: All right. Thank you.

24 (Recess taken at 9:27 a.m. to 9:34 a.m.)
25

1 (The following proceedings were had in open court.)

2 THE CLERK: Case Number 2:17-CR-140, United States of
3 America vs. Keith Drummond.

4 THE COURT: Mr. Thomas?

5 MR. THOMAS: Your Honor, do you want me to approach?

6 THE COURT: You're fine there. Thank you.

7 I understand as we have the jury in the courthouse that
8 Mr. Drummond has a change of heart. Is that his intention?

9 MR. THOMAS: That is, Your Honor. At this time he'd
10 ask leave of Court to change his previous plea of not guilty to
11 guilty, Your Honor.

12 THE COURT: All right. There are three counts in this
13 case. And what I'm going to do, Mr. Drummond, is ask you a
14 couple of questions, but there needs to be a written plea
15 agreement in this case which can be prepared forthwith.

16 What I wanted to do is, first, be able to discharge this
17 jury. I don't want them waiting if this case is not going to
18 be tried.

19 I assume the plea agreement can be done within the hour
20 most likely?

21 MR. KELLEY: Yes, Your Honor.

22 THE COURT: All right. And then we will reconvene
23 with all the formalities required for the formal taking of a
24 guilty plea.

25 But in the short run I'm going to ask Mr. Drummond some

1 direct questions.

2 Mr. Drummond, you are charged in Count 1 with conspiracy
3 to possess with intent to distribute more than 28 grams of
4 cocaine base together with heroin, marijuana and oxycodone.

5 How do you plead to Count 1, guilty or not guilty?

6 THE DEFENDANT: Guilty, Your Honor.

7 THE COURT: Count 2, you are charged with possessing
8 one or more firearms in furtherance of a drug trafficking
9 offense for which you could be prosecuted in a court of the
10 United States.

11 How do you plead to the second count, guilty or not
12 guilty?

13 THE DEFENDANT: Guilty, Your Honor.

14 THE COURT: And the final count, you are charged with
15 knowingly possessing a firearm that had been shipped and
16 transported in interstate commerce after you had been
17 previously convicted of a crime for which you could have been
18 imprisoned for more than one year.

19 How do you plead to Count 3, guilty or not guilty?

20 THE DEFENDANT: I'm not understanding that,
21 Your Honor.

22 THE COURT: This is being a felon in possession of a
23 firearm charge, basically.

24 THE DEFENDANT: Guilty, Your Honor.

25 THE COURT: All right. Now, to be clear, I'm going to

1 be asking you a lot more questions under oath within the hour.
2 We're going to go through a much more formal taking of the plea
3 of guilty. There are things I need to know about you and also
4 about what you know of these charges. We're going to do that
5 in just a few moments. But unless there is an objection, I'm
6 going to go ahead and discharge the prospective jurors.

7 MR. THOMAS: No objection.

8 THE COURT: All right. Then we'll reconvene once the
9 plea agreement is signed sometime later this morning.

10 Thank all of you. With that, we'll be in recess.

11 (Recess taken at 9:37 a.m. to 11:30 a.m.)
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1 (The following proceedings were had in open court.)

2 THE CLERK: Case Number 2:17-CR-140, United States of
3 America vs Keith Drummond.

4 Will counsel and defendant please approach.

5 THE COURT: Counsel, good morning to all of you again.
6 Starting with the government, please enter your
7 appearances.

8 MR. KELLEY: Assistant United States Attorneys Kevin
9 Kelley and Noah Litton, Your Honor.

10 MR. THOMAS: Good afternoon again, Your Honor.
11 Larry Thomas on behalf of Keith Drummond.

12 THE COURT: And, Mr. Kelley, would you please indicate
13 the status of this case?

14 MR. KELLEY: Yes, Your Honor.

15 The defendant had previously entered not guilty pleas to
16 a superseding indictment. Earlier this morning he changed
17 those pleas to guilty to three counts.

18 Count 1 was a conspiracy to distribute narcotics, Count
19 2 is possession of a firearm in furtherance of that drug
20 trafficking crime, and Count 3 was possession of a firearm by a
21 previously convicted felon.

22 The parties have since the entry of those guilty pleas
23 executed a written plea agreement, and that plea agreement has
24 now been filed with this court.

25 THE COURT: Thank you.

1 Mr. Drummond, you were before me weeks ago and pleaded
2 not guilty to three counts in the indictment. It has now been
3 indicated that you wish to change those pleas from not guilty
4 to pleas of guilty and also be bound by a plea agreement.

5 Is that correct?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And have you had ample opportunity to
8 discuss these change of pleas with your counsel in this case?

9 THE DEFENDANT: Yeah, I did, but --

10 THE COURT: All right. I'm going to ask you directly,
11 you are charged in Count 1 with conspiracy to distribute and to
12 possess with intent to distribute over 28 grams of crack
13 cocaine, together with heroin, marijuana, cocaine and
14 oxycodone.

15 How do you plead to Count 1, guilty or not guilty?

16 THE DEFENDANT: Guilty, Your Honor.

17 THE COURT: In Count 2 you are charged with possession
18 of a firearm in furtherance of a drug trafficking crime, in
19 violation of Chapter 18 of the United States Code, Section
20 924(c).

21 How do you plead to that count, guilty or not guilty?

22 THE DEFENDANT: Guilty, Your Honor.

23 THE COURT: And, finally, you are charged in Count 3
24 with a violation of Chapter 18, United States Code, Section
25 922(g), possession of a firearm by a previously convicted

1 felon.

2 How do you plead to those charges, guilty or not guilty?

3 THE DEFENDANT: Guilty, Your Honor.

4 THE COURT: Before I can accept any of your offered
5 pleas of guilty, I have to ask you a number of questions. I
6 have to make sure you're making these pleas voluntarily, that
7 you have a full understanding of the nature of the charges and
8 all of the possible consequences of your offered plea of
9 guilty. These are all standard questions I ask in every case.
10 I need to ask them under oath so I'll ask the courtroom deputy
11 to please swear in Mr. Drummond.

12 (Whereupon, the Defendant was sworn.)

13 THE COURT: My first question is do you understand you
14 are now under oath?

15 THE DEFENDANT: Correct.

16 THE COURT: All right. How old are you today?

17 THE DEFENDANT: 40.

18 THE COURT: 40?

19 And how much formal education or schooling have you
20 received?

21 THE DEFENDANT: Eleventh grade.

22 THE COURT: All right. Do you have any type of
23 physical or mental illness at this time?

24 THE DEFENDANT: Yeah. I have mental disabilities.
25 I'm supposed to see psych for it, been on and off my meds for

1 about three or four years now.

2 THE COURT: And what is the condition?

3 THE DEFENDANT: Paranoid schizophrenic, delusional.

4 THE COURT: All right. Are you currently taking any
5 medication for that condition?

6 THE DEFENDANT: I asked mental health to see me ever
7 since I been here, but they've never given me any medication.

8 THE COURT: So, over the last 24 hours, have you taken
9 any type of prescription medication?

10 THE DEFENDANT: I took my acid reflux medication, I've
11 taken my high blood pressure medication and my inhaler, and I
12 just had a breathing treatment upstairs.

13 THE COURT: All right. So let's put those in a
14 different category. You just mentioned breathing and acid
15 reflux. You've taken medication for those conditions recently;
16 is that correct?

17 THE DEFENDANT: This morning, yes, sir.

18 THE COURT: And those medications don't prevent you
19 from understanding what we're doing here today, do they?

20 THE DEFENDANT: No, sir.

21 THE COURT: Now, let's talk about the schizophrenia
22 you just mentioned. Have you been able to understand
23 everything to do with this case in terms of documents and court
24 proceedings?

25 THE DEFENDANT: I have. Not -- I don't fully, fully

1 completely honestly understand everything, all the
2 stipulations, but I'm in compliance that I think it's like the
3 best thing for me to do as far as being able to be able to get
4 home to my family as soon as possible.

5 THE COURT: But have you been able -- you understand
6 the charges against you in this case, don't you?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And you understand the possible
9 consequences you face whether you go to trial, whether you
10 don't, whether you plead guilty or whether you plead not
11 guilty?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You understand all that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Mr. Thomas, to be clear, do you have any
16 doubt as to Mr. Drummond's competence in this case?

17 MR. THOMAS: Oh, no, Your Honor.

18 THE COURT: All right. By the way, in addition to
19 what I asked you about the medications you've taken over the
20 last 24 hours, have you taken any other type of narcotic drug
21 of any kind or alcoholic beverage?

22 THE DEFENDANT: No.

23 THE COURT: I'm going to ask you some questions about
24 your relationship with your lawyer in this case, Mr. Larry
25 Thomas. As I mentioned, these are all standard questions.

1 Have you told him everything you know about this case?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you believe then he has had all the
4 information necessary to give you proper legal advice?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And are you satisfied with his advice and
7 representation?

8 THE DEFENDANT: I'm satisfied, but there's one issue
9 that we just discussed that I wasn't, like -- didn't sit well
10 with me. I was understanding -- understanding, like, if I
11 would have pled out -- if I would have pled out previously,
12 that my sentence would have been lesser. But I only had an
13 hour to decide the last time we was here, and then as I --
14 Mr. Kelley has said, like, I had that hour and approximately
15 three-week time lapse, I do believe, to where I could have
16 initially still took that original plea agreement, and I just
17 didn't understand. Like, if I fully understood everything at
18 that present point in time, I would have did that instead of
19 agreeing to this deal right now. But since this is the only
20 option that I have left and I just agree to it, I guess.

21 THE COURT: You remember I had you in here and we had
22 a very formal proceeding where I asked you a lot of questions
23 about the offer the government had put on the table.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And I was satisfied that you understood

1 that offer. You did understand it, didn't you?

2 THE DEFENDANT: I understood it, but to a certain
3 point. You know what I'm saying? I thought, like, under those
4 conditions, I still was -- still likelihood a chance that I
5 could receive five years of sentence.

6 THE COURT: What I remember is Mr. Kelley told you at
7 the time that if you didn't accept it then, that it would never
8 be offered again. And I asked Mr. Kelley to extend it for a
9 couple hours to let you think about it.

10 Do you remember that?

11 THE DEFENDANT: Correct.

12 THE COURT: And you still turned it down.

13 THE DEFENDANT: Yeah, I still turned it down. But
14 this is under -- my train of thought was if I waited, I still
15 had a chance of receiving a different deal. That's -- that's
16 what I understood.

17 THE COURT: You were hoping for that, would that be
18 fair?

19 THE DEFENDANT: Yeah, I mean.

20 THE COURT: But the trouble is the government took the
21 position it was now or never, and I don't think you took that
22 to heart.

23 THE DEFENDANT: I did everything I could as far as --
24 within an hour, yeah.

25 THE COURT: Basically, you've been working with

1 Mr. Thomas, and he's given you good legal representation from
2 your perspective; is that correct?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. Now, I'm going to review with
5 you with regard to each one of these counts what it is the
6 government would have to prove to a jury beyond a reasonable
7 doubt before you could be convicted. I have to be clear that
8 you know all this.

9 With regard to Count 1, the government would have to
10 prove three different factors, or elements, each one beyond a
11 reasonable doubt.

12 First, that you and at least one other person conspired
13 to distribute and to possess with intent to distribute 28 grams
14 or more of crack cocaine, heroin, marijuana, cocaine and
15 oxycodone;

16 Second, that you knowingly and voluntarily joined this
17 criminal conspiracy;

18 And, third, that this conspiracy existed within the
19 Southern District of Ohio at the time alleged in what is called
20 the superseding indictment. That's the most recent indictment.

21 Do you understand all that?

22 THE DEFENDANT: Correct.

23 THE COURT: All right. With regard to Count 2, the
24 government would have to prove three different elements.

25 First, that you committed the crime we just discussed in

1 Count 1, conspiracy to distribute and possess with intent to
2 distribute 28 grams or more of crack cocaine, heroin,
3 marijuana, cocaine and oxycodone;

4 And that you, second, knowingly possessed a firearm as
5 described in Count 2 of the superseding indictment;

6 And, third, that the possession of the firearm or
7 firearms was in furtherance of the crime charged in Count 1.

8 Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And the last count, Count 3, the
11 government would have to prove four elements or facts.

12 First, that you were previously convicted of a felony
13 and that, thereafter, you knowingly possessed a firearm
14 described in Count 3;

15 Third, that the firearm crossed the state line prior to
16 or during your alleged possession of the gun;

17 And, fourth, that this offense occurred in the Southern
18 District of Ohio at the approximate time alleged in the
19 superseding indictment.

20 Do you understand all of that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: I'm going to review with you the possible
23 penalties you face with all three counts together because they
24 interact with each other.

25 With regard to Count 1, do you understand you face a

1 mandatory minimum term of 10 years of imprisonment?

2 THE DEFENDANT: 10 years?

3 THE COURT: Yes.

4 THE DEFENDANT: Yeah. Yes, sir.

5 THE COURT: And you face -- that's the lowest you can
6 get, but you face a maximum of up to life imprisonment together
7 with a term of supervised release of at least eight years and a
8 fine not to exceed \$8 million.

9 Do you understand all of that?

10 THE DEFENDANT: Yeah.

11 THE COURT: Okay. Supervised release, I mentioned to
12 you, would be a period of time that would begin after you're
13 released from imprisonment. You'd be supervised by a probation
14 officer of this court.

15 With regard to all the terms of supervised release we'll
16 be discussing in this case, do you understand if you didn't
17 meet those terms and conditions, that I can cause you to be
18 reimprisoned?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. With regard to Count 2, you
21 face a term of imprisonment of at least five years to life and,
22 to be clear, this five-year minimum has to be consecutive,
23 meaning added to the 10 years we just discussed in Count 1.

24 Do you understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: That would mean a minimum of 15 years
2 between Count 1 and Count 2, and you understand that.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. You also face a term of
5 supervised release of up to five years on Count 2 and a fine of
6 up to \$250,000.

7 Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: With regard to Count 3, you face a term of
10 imprisonment not to exceed 10 years. In this case, this
11 particular count, that could be consecutive or it could be
12 concurrent. It's not automatically stacked on top of the other
13 one as Counts 1 and 2 are.

14 Do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you understand you face a term of
17 supervised release not to exceed 3 years and a fine not to
18 exceed \$250,000?

19 Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you also understand that you are
22 forfeiting any firearms, ammunition and drug proceeds as laid
23 out in the superseding indictment?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And, finally, you will be assessed a \$300

1 special assessment. In other words, \$100 per count of the
2 three counts of this case.

3 And you understand that as well.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you understand that each of the three
6 counts you are offering to plead guilty to are felony counts?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: That means, based on each one of these
9 counts, you will then become a felon. And based on these
10 charges alone, there will be a number of automatic legal
11 consequences.

12 If you are a citizen, you will lose a number of civil
13 rights that you now have, such as your right to hold public
14 office, your right to vote, your right to serve on a jury, and
15 your right to possess a firearm.

16 Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: If you are not a citizen, it could result
19 in your being deported from this country, being later denied
20 citizenship and later denied readmission to the United States.

21 Do you understand that as well?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: If you are a naturalized citizen, it could
24 result in the government seeking to take away your citizenship.

25 Do you understand that as well?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: We're going to talk for a moment about the
3 sentencing guideline range. You and Mr. Thomas have discussed
4 how the sentencing guideline range applies in this case, have
5 you not?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: I want to be clear, we'll start with Count
8 1, there's a minimum 10 year sentence, maximum life. The
9 sentencing guidelines will not change that. What the
10 sentencing guidelines will do is take that range of 10 years to
11 life and look at the facts in this case, your past, put those
12 all together and come up with a range between the 10 years and
13 life.

14 Do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And, likewise, with Count 2, it will not
17 change the range of five years to life, but it will narrow that
18 range to a period of months rather than years. And with regard
19 to Count 3, between zero and 10 years, it will also come up
20 with a guideline range for that offense as well.

21 So, in the end, there will be an opportunity for you and
22 Mr. Thomas to review how a probation officer has computed the
23 guideline range. You may object, if appropriate, the
24 government may object, if appropriate. And, in the end, I will
25 consider the sentencing guideline range, but you understand I

1 am only going to treat it as advisory, and I'm not required to
2 give you a sentencing guideline range sentence.

3 Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. I next want to review with you
6 a number of rights you have under the Constitution.

7 You understand you have the right to continue in your
8 earlier pleas of not guilty and then have the case tried before
9 a jury in this court?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. If you chose that route, you
12 would have the right to a speedy and public trial where you
13 would have the right to the assistance of a lawyer throughout
14 the trial, you would have the right to confront and
15 cross-examine any witnesses testifying against you, and you
16 could not be compelled to incriminate yourself; meaning, you
17 would not have to testify unless you chose to do so in your own
18 defense.

19 At a trial, you would be presumed innocent unless the
20 government could convince the jury with competent evidence that
21 you were guilty beyond a reasonable doubt.

22 You would also be entitled to force or subpoena
23 witnesses into court to testify on your behalf.

24 Do you understand, if I accept your offered plea of
25 guilty, you will be giving up all of these rights?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you understand, if I accept your
3 offered plea of guilty, there will not be a trial in this case
4 so that by offering to plead guilty, you are also offering to
5 give up your right to a trial?

6 THE DEFENDANT: Yes.

7 THE COURT: In just a moment I'm going to ask you some
8 questions about what happened in this case. I will have to be
9 convinced that you did, in fact, commit these offenses.

10 So do you understand you will also have to give up your
11 right not to incriminate yourself before I can accept your
12 offered pleas of guilty?

13 Do you understand that?

14 THE DEFENDANT: No, not really.

15 THE COURT: In other words -- well, to be precise,
16 there's a statement of facts attached to your plea agreement.
17 I'm going to ask you questions about that statement. I want to
18 make sure it's accurate and that you did everything that that
19 statement says you did; otherwise, you wouldn't be guilty of
20 these offenses. So you're going to have to explain to me
21 whether the statement of facts is or is not true.

22 Do you understand that?

23 THE DEFENDANT: Yeah, I understand. Can I get a
24 moment, please? I'm not -- this is not -- this is not really
25 sitting well with me at all. It's like it's bothering me for

1 the simple fact like when you just asked me do I agree to those
2 statements of facts that you're about to ask me, you know what
3 I'm saying?

4 THE COURT: Right.

5 THE DEFENDANT: I'm just -- I'm more or less pleading
6 out. I'm just trying to get home to my family as soon as
7 possible. And, you know what I'm saying, I'm having a hard
8 time dealing with myself more or less pleading to something
9 that I necessarily did not do.

10 THE COURT: Well, let me be clear about this. Let's
11 just talk about a typical defendant, not you, for a second.

12 All right. There's a lot of pressure about whether you
13 plead guilty or whether you plead not guilty, and it can be
14 very upsetting, particularly on the day of a trial as today is.
15 All right. So if you feel pressure because of the fact you're
16 facing a jury trial, that's one thing. What I will not permit
17 you or anyone else to do is to tell me they didn't do something
18 and then let them plead guilty to it. That's not going to
19 happen so we'll have to be clear on that.

20 If you didn't do this, then you need to go to trial. If
21 you did do this and you want to plead guilty and hope that you
22 get a better arrangement when this is all done under the
23 sentencing guidelines, you can do that.

24 What you can't do is tell me you didn't do this and
25 expect me to take your guilty plea because I will not do that.

1 All right. So you understand, though, before we can
2 finalize this process, I am going to ask you some questions
3 about the statement of facts. We'll do that in a minute, and
4 then you'll decide what you're going to tell me.

5 Do you understand that?

6 THE DEFENDANT: (Defendant nods head.)

7 THE COURT: All right. There is a written plea
8 agreement in this case that has just been filed indicating that
9 you and Mr. Thomas and Mr. Kelley and Mr. Litton have agreed to
10 a plea of guilty with certain conditions. I'm going to ask
11 Mr. Kelley to summarize the relevant terms and conditions of
12 the plea agreement.

13 MR. KELLEY: Thank you, Your Honor.

14 The plea agreement, that consists of primarily
15 standardized language that our district uses, has a total of 16
16 paragraphs. Among the highlights are that the defendant does
17 understand the potential penalties as outlined by the Court,
18 including the mandatory minimums of both 10 years and 5 years
19 consecutive.

20 The parties have reached some agreements as it relates
21 to the sentencing guidelines.

22 We agree that the relevant conduct in this case is
23 limited to just 112 to 196 grams of crack cocaine or, in other
24 words, an offense level of 26. That's also based on using
25 other substances and coming up with an equivalency. So the

1 relevant conduct is only 112 to 196 grams.

2 We've also agreed that the defendant should be receiving
3 a two-level enhancement for maintaining a premises for
4 distribution of controlled substances.

5 The parties have also agreed, though, the defendant
6 would receive no enhancement for a role in this case.

7 The parties have also agreed that he would receive three
8 levels for acceptance.

9 As the Court is aware, that's not typical on the day of
10 trial, but we've made the agreement that he would receive three
11 levels for acceptance of responsibility.

12 The defendant has also agreed to the forfeitures as
13 outlined in the plea agreement, Your Honor, as specified in the
14 superseding indictment as it relates to the guns and the
15 proceeds.

16 And, finally, there is an appeal waiver. The defendant
17 has agreed to waive any right to appeal with the exception of
18 ineffective assistance of counsel or prosecutorial misconduct.

19 There are no additional promises or agreements that are
20 not contained within the plea agreement itself, Your Honor.

21 THE COURT: Thank you.

22 Mr. Thomas, in your view, is that a fair representation
23 of the terms and conditions of the plea agreement?

24 MR. THOMAS: Yes, it is, Your Honor.

25 THE COURT: And, Mr. Drummond, is that also your

1 understanding of your plea agreement?

2 THE DEFENDANT: Yes, sir, Your Honor.

3 MR. KELLEY: And then, as the Court is aware,
4 Attachment A of the plea agreement is our statement of facts,
5 Your Honor.

6 THE COURT: Right. We'll talk about that in some
7 detail in just a moment.

8 I want to review one paragraph with you. There is a
9 waiver of appeal in this case. Typically, a defendant has a
10 right to appeal the sentence but, in this case, there has been
11 an agreement reached, and part of the agreement is that there
12 is no right to appeal with two limited exceptions.

13 Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: One limited exception would be if the
16 government committed prosecutorial misconduct, and the other
17 would be if Mr. Thomas were constitutionally ineffective on
18 your behalf. You've preserved those, but I'd just advise you
19 those are very narrow rights that are preserved. The overall
20 right to appeal is otherwise waived. Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. Now, we're going to get to the
23 statement of fact. Pages 7 and 8 of the agreement goes through
24 a statement of facts involving the conduct that goes with the
25 three charges.

1 Mr. Thomas, if I could ask you to give this to the
2 defendant. Now, I believe this was signed this morning, so
3 hopefully you're still familiar with this.

4 You recognize this statement; is that correct?

5 THE DEFENDANT: Do I need to read all this or --

6 THE COURT: If you go to the second page, your
7 signature appears to be on there. Let me ask you, is this your
8 signature?

9 THE DEFENDANT: Oh, this is the paper I already
10 signed. Okay. I thought it was something different. I'm
11 sorry.

12 THE COURT: This is the same?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: So you read it before you signed it; is
15 that correct?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And was everything in that statement
18 correct?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Is everything -- as far as you know,
21 nothing has changed in between that would make you question
22 that statement?

23 THE DEFENDANT: No, sir.

24 THE COURT: And you're offering to plead guilty to the
25 three charges because you actually committed those offenses; is

1 that your testimony?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: In light of all my questions, is it still
4 your intention to plead guilty to Counts 1, 2 and 3?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: I've observed the appearance and the
7 responsiveness of the defendant in giving his answers to my
8 questions.

9 Based upon my observations of him and answers given, I
10 am satisfied that he is in full possession of his faculties.

11 With regard to any physical or mental illness, we've
12 already discussed those conditions, he does appear to have
13 several, but I'm satisfied they do not prevent him from
14 understanding these proceedings.

15 He is not under the influence of narcotics or alcohol,
16 and he understands the proceedings we are completing. He
17 understands the nature and the meaning of the charges and all
18 of the attendant consequences of his offered plea of guilty,
19 and he is aware of the terms and conditions of the plea
20 agreement.

21 From all of this, I find that the three pleas of guilty
22 have been made voluntarily with a full understanding of the
23 nature of the charges and consequences of his offered pleas of
24 guilty. I accept all three pleas of guilty, and I also accept
25 the terms and conditions of the plea agreement.

1 Are there any other matters we need to take up at this
2 time, counsel?

3 MR. KELLEY: Your Honor, just a couple matters.

4 One, we have retrieved the notebook that contained the
5 Jencks material in this case; however, Mr. Thomas has asked as
6 a courtesy if we would consider sharing redacted versions with
7 him. We will make some redacted versions so that he can use
8 those in the preparation of the PSI. But I would ask the Court
9 to remind Mr. Drummond that there is a protective order that
10 fairly strictly limits any sharing of that information. And,
11 in particular, we do not want any of the names of the witnesses
12 shared, and I believe the Court has so ordered.

13 THE COURT: In other words, Mr. Thomas has full access
14 to it and he can share that with Mr. Drummond, but Mr. Drummond
15 can't share it with anybody else.

16 You understand that, Mr. Drummond?

17 THE DEFENDANT: Yes, sir.

18 MR. KELLEY: Thank you, Your Honor.

19 There's nothing additional.

20 THE COURT: Mr. Thomas, anything additional?

21 MR. THOMAS: No, Your Honor. Thank you.

22 THE COURT: Thank you all very much. With that, we'll
23 be in recess.

24 (Proceedings concluded at 11:55 a.m.)

25 - - -

C E R T I F I C A T E

I, Darla J. Coulter, do hereby certify that the foregoing is a true and correct transcript of the proceedings before the Honorable Edmund A. Sargus, Jr., Chief Judge, in the United States District Court, Southern District of Ohio, Eastern Division, on the date indicated, reported by me in shorthand and transcribed by me or under my supervision.

s/Darla J. Coulter
Darla J. Coulter, RMR, CRR
Official Federal Court Reporter

October 10, 2019